

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

ARCH INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
VARSITY BRANDS HOLDING CO., INC.)
and U.S. ALL STAR FEDERATION, INC.,)
)
Defendants.)

Case No. 2:23-cv-02689-JFT-atc

**ARCH INSURANCE COMPANY'S
MOTION TO DISMISS COUNT IV OF USASF'S COUNTERCLAIM**

For the reasons set forth in the accompanying Brief, which is incorporated herein, Plaintiff Arch Insurance Company (“Arch”) respectfully moves to dismiss Count IV of the Counterclaim filed by defendant U.S. All Star Federation, Inc. (“USASF”) pursuant to Federal Rule of Civil Procedure 12(b)(6). In Count IV, USASF purports to state a claim under Tennessee’s bad faith statute, Tenn. Code Ann. § 56-7-105, and common law. For four independent reasons, USASF fails to state a claim. First, Tennessee does not recognize a cause of action for common law bad faith. Second, USASF’s claim is not cognizable because “a bad faith claim under Tenn. Code Ann. § 56-7-105 is unavailable for liability insurance policies,” *see Crestbrook Ins. Co. v. Crosby*, No. 2:22-cv-2406, 2023 WL 3767085, at *19 (W.D. Tenn. June 1, 2023), such as the Arch Policies (defined below) at issue here. Third, the Counterclaim does not allege that USASF satisfied the 60-day demand requirement, which is a prerequisite to bringing a claim under the bad faith statute. Fourth, USASF has failed to allege any plausible, non-conclusory allegations that satisfy the *Twombly/Iqbal* pleading standard and would show, if proven, that Arch acted in bad faith.

Dated: May 8, 2024

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CERTIFICATE OF SERVICE

On May 8, 2024, Arch Insurance Company filed the above document with the Court's ECF and served a copy of same via electronic mail upon the following:

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